

IN THE NAME OF ALLAH ALMIGHTY, THE MOST MERCIFUL,
MOST BENEFICENT

KHILJI & CO.

Chartered
Accountants

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DISCLAIMER

Khilji & Co (Chartered Accountants) is pleased to present Firm's Newsletter. The only purpose of this document is to provide updated information to our clients about recent circulars/ notifications issued by various authorities during this month and also to provide our clients with information on latest useful decisions of appellate courts. The information provided in this document should only be used in conjunction with professional opinion from tax/ legal advisor and checked for updated position of law. This document as a whole or its any part should not be reproduced in any form without prior written approval from Khilji & Co. This newsletter is distributed free of cost to our clients only. We humbly request our readers to please provide us the most valuable comments to make this more informative and useful. It has always been a pleasure to be of service to our clients.

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LAHORE HIGH COURT – STR NO. 242 OF 2015

Parties: CIR, VS M/S Ali Hassan Metal Works

Date of Order: 01-11-2017

Brief Facts:

The taxpayer claimed was alleged for the claim of input tax on invoices issued by alleged blacklisted or suspended registered person for the period July 2011, October 2011, November 2011, January 2012 and February 2012. Consequently, the order-in-Original was passed accordingly.

Being aggrieved the taxpayer filed an appeal before the learned CIR(Appeals) who upheld the order of the assessing officer.

Being aggrieved, the taxpayer filed an appeal in the Appellate Tribunal Inland Revenue (ATIR) and the ATIR accepted the stance of the taxpayer.

Decision:

The honorable Court after discussing the legal provisions involved resettle the question and rejected the appeal of Department on failure (by Deptt) to establish that the tax was not deposited with the National Exchequer in following words:

“12. The questions proposed are not couched in proper words to clinch the proposition of law arising from the impugned order, therefore, we intend to resettle the question in following words:

“Whether Taxation Officer was justified to invoke the provisions of Section 21(3) of the Sales Tax Act, 1990 or Rule 12(5) of the Sales Tax Rules, 2006 for not entertaining invoices, issued prior to blacklisting of supplier, for tax credit or refund, without establishing, through self-speaking order, that the invoices were fake or flying because the claimed tax was not deposited in National Exchequer”

*13. Our answer to the resettled question is in Negative.
Reference Application is decided against the applicant department.”*

SUPREME COURT OF PAKISTAN: CIVIL APPEAL NO. 457 & 458 OF 2010

Parties: M/s Dewan Khalid Textile Mills Ltd VS CIR (Legal), LTU Karachi

Date of Order: 07-12-2018

Brief Facts:

The taxpayer filed its return for the relevant year and before the assessment was framed filed the revised return on the basis that the return included income subject to FTR on accrual basis and needed to be revised on actual basis as a separate block of income. The contention was accepted by the Income Tax Officer in the assessment framed on December 28, 1995. However, the Income Tax Officer sought to reopen the assessment under section 65 of the Income Tax Ordinance (ITO), 1979 by notice dated June 10, 1998 alleging that the taxpayer was not so entitled to treatment adopted by passing revised assessment order dated June 25, 1998.

Being aggrieved, the taxpayer filed an appeal to the CIR(Appeals) and agitated the very basis of invoking the section 65 on the plea that pre-requisite of "definite information" which the taxpayer claimed that was not existed in the facts and circumstances of the case. However, the learned CIR(Appeals) rejected the appeal.

Being aggrieved the taxpayer filed the appeal before the honorable ATIR on the same ground which was accepted.

The department filed the appeal in the honorable High Court, which was accepted in favor of the Department. The Court placed reliance on a case law reported as 2004 SCMR 1319 (Genertech Pakistan Limited & Others Vs Appellate Tribunal of Pakistan & Others) whereby certain observations were made regarding section 80B on the basis that a judgment of Superior Court constitutes "definite information". Being aggrieved the taxpayer filed these appeals.

Issue Raised:

Whether section 65 of the ITO, 1979 can be invoked in absence of "Definite information" that was not existed in the facts and circumstances of the case?

Decision:

The honorable Apex Court accepted the appeal observing that the case law referred was reported after many years of invoking of proceedings under section 65 of the ITO, 1979 hence, not existed at the time of proceedings so does not constitute "definite information" as follows:

“6. In the present case the learned High Court correctly noted (in para 8) that “the main controversy in the present case is that whether definite information was available with the AO to reopen an already completed assessment or not”. However, with respect, the learned High Court then erroneously proceeded to rely on Genertech, without appreciating that that judgment was rendered many years after the initiation of action under s. 65 in the case at hand. Since the judgment did not exist at the relevant time it could not ipso facto constitute “definite information” in the facts and circumstances of the present case. Therefore, with respect, the reliance placed thereon was misconceived and misplaced. In our view it is only a judgment of a Superior Court as available at the relevant time that can constitute “definite information”.....

.... Be that as it may, no such judgment existed when proceedings were initiated under s. 65 and hence there was no “definite information” within the meaning of law that would have made it permissible for the ITO to reopen the assessment. In our view, the learned Appellate Tribunal was correct in its decision and, with respect, the learned High Court erred materially in coming to a different conclusion. The reference by learned counsel for the Department to the recent judgment of this Court noted above (from which a passage was read out) is, with respect, not apposite since the facts and circumstances in the cited case were materially different from those at hand.”

The honorable Court also observed that the case law relied upon may be open to doubt as apparently specific clauses defining the Company were not brought into attention of the Court. The relevant extract is reproduced hereunder for ease of reference:

“8. The actual statutory language used in s.80B, with reference to the assesses to whom the said provision was applicable, has already been reproduced herein above. Five categories of assesses came within the scope of the section, of which the last was “artificial juridical persons referred to in clause (32) of s. 2”. Clearly, in order to properly appreciate the scope of this category it was necessary to refer back to s. 2(32). This was in fact the definition of the term “person”. As presently relevant, it provided that “a company, a local authority and every other artificial juridical person” was included in the definition. The term “company” was itself defined in clause (16) of s. 2 and, as was to be expected, a company registered under companies’ legislation found express mention therein. It therefore seems to us, prima facie, that when all the relevant statutory provisions are taken into account a company did come within the scope of s. 80B. It appears that the specific clauses of s. 2 just referred to were not brought to the attention of the Court in Genertech and thus all of the material statutory provisions were not taken into account. To the extent that s. 80B was considered therein it therefore appears to us, with respect, that the observations made in Genertech may be open to doubt”

NOTIFICATIONS / CIRCULARS

SECP NOTIFICATION

Introduction

SECP vide SRO 1476(I)/2018 dated December 06, 2018 notified fee, in Seventh Schedule to the Companies Act 2017, for seek relaxation of any of the requirements of Listed Companies (Code of Corporate Governance) Regulations, 2017.

Commentary

Fee to seek relaxation from any of the requirements of Listed Companies (Code of Corporate Governance) Regulations, 2017, is PKR100,000/- both for online and offline mode.

Link of Document

<https://khilji.net.pk/wp-content/uploads/2018/12/amendments-to-the-7th-Schedule-CO-2017.pdf>

SECP NOTIFICATION

Introduction

Securities and Exchange Commission of Pakistan issued S.R.O. 1473 (I)/2018 dated December 4, 2018 This SRO indicates the amendments to the Real Estate Investment Trust Regulations 2015, the same having been previously published vide S.R.O. 995 (I)/2018, dated August 10, 2018..

Detailed Commentary

<https://khilji.net.pk/wp-content/uploads/2018/12/Detailed-Commentary-on-SRO-1473-REIT.pdf>

Link of Document

<https://khilji.net.pk/wp-content/uploads/2018/12/REITs-amendments-final.pdf>

SECP Notification

SECP NOTIFICATION

Introduction

SECP vide S.R.O. 1475 (I)/2018 dated December 5th 2018 notified amendments to the Listed Companies (Code of Corporate Governance) Regulations, 2017. These amendments broadened the BOD's responsibilities w.r.t. compliance of Code of Corporate Governance.

Commentary

In regulation 10, the following amendments are notified: –

- New regulation (1A) is inserted that, the Board of directors is responsible for adoption of corporate governance practices by the company and monitoring effectiveness of such practices and the members of board shall ensure to apply high ethical standards in performing their responsibilities.
- In Sub-Regulation 3, clause III is substituted by “adequate policy, systems and controls are in place for communication and disclosure with stakeholders, identification and redressal of grievances and queries of shareholders/ investors and complaints arising from unethical practices”
- In Sub-Regulation 3, new sub-clause – (va) “formal mechanism shall be in place for selecting, compensating, monitoring and, when necessary, replacing senior executives and overseeing succession planning and the remuneration of key executive and board may be aligned with the long term interests of the company and its shareholders”

In regulation 20, Proviso is inserted that Exemption may be granted from Directors training programme certification in following cases keeping in view the qualification and experience of the Directors: –

- a director having a minimum of 14 years of education and has 15 years of experience on board of listed company, local and/or foreign; or
- an individual having at least 25 years of post-qualification experience in fields of law, audit, tax, finance, corporate affairs, regulatory or government sector experience and is a member of professional body of accountants whose qualification is recognized as equivalent to post graduate degree by HEC; or
- an individual having at-least 30 years of experience in fields of law, audit, tax, finance, corporate affairs, regulatory or government sector experience and has a postgraduate degree in the above mentioned fields from a university in Pakistan or equivalent recognized and approved by the Higher Education Commission of Pakistan (HEC).”;

The expression “financial literate” shall mean a person who is a member of a recognized body of professional accountants or has a post graduate degree in finance from a university or equivalent institution, either in Pakistan or abroad recognized by the Higher Education Commission of Pakistan or who has at-least ten years of experience as audit committee members or at-least twenty years of senior management experience in overseeing of financial, audit related matters.

Link of Document

<https://khilji.net.pk/wp-content/uploads/2018/12/Amendments-to-Listed-CCG-Regulations-2017.pdf>

FBR Circular

Introduction

Federal Board of Revenue has issued Circular 9 of 2018 dated December 13, 2018.

Commentary

FBR vide this Circular has extended date of filing of Withholding Tax Statements for the month of **November 2018**, which were due on **December 15, 2018** upto **December 22, 2018**.

Link of Document

<https://khilji.net.pk/wp-content/uploads/2018/12/201812131812198938WithholdingStatementNov.2018.pdf>

SECP Notification

Introduction

The Securities and Exchange Commission of Pakistan (the Commission) in order to ensure that Insurance Sector should be operated by competent persons with adequate know-how of the insurance business without any involvement in financial crimes and in order to meet the challenges of globalization, to avoid maladministration and to mitigate the money laundering and terrorist financing activities, the Commission hereby directs vide S.R.O. 1525 (I)/2018 dated December 14th, 2018, all the regulated, licensed and associated persons and entities which fall under the domain of insurance sector regulated by the Commission, for submission of undertaking / affidavit as explained under caption "Commentary".

Detailed Commentary

<https://khilji.net.pk/wp-content/uploads/2018/12/Detailed-Commetnary-for-SECP-SRO-1525.pdf>

Link of Document

<https://khilji.net.pk/wp-content/uploads/2018/12/Notification-Dierctive-on-aditional-fit-and-proper-criteria-for-sponsors-beneficial-owners-1.pdf>

FBR Circular

Introduction

Federal Board of Revenue has issued Circular 10 of 2018 dated December 31, 2018.

Commentary

Vide the above referred Circular, FBR has issued Extension the date of Filing of Revised Returns as specified in Clause iii of Section 214E upto January 31, 2018.

Link of Circular

Please click to read the Original Circular.

<https://khilji.net.pk/wp-content/uploads/2018/12/201812312112178787Circular10of2018.pdf>

BLOG OF THE MONTH

Khilji & Co, Chartered Accountants has initiated a host of programs to enhance the skills of its professional team. We strongly believe that learning is a continuous process. Every individual has its own way of thinking and interpreting experiences into words. KCO has provided its professional team a platform in shape of KCO website to showcase their talent dynamics. Each member of the team has been asked to write his blog. Starting from this month, KCO will publish one selected blog as a whole in its monthly Newsletter.

Companies (Investment in Associated Companies or Associated Undertakings) Regulations 2017

This blog is written by **Mr. Nauman UI Qadeer, Senior Manager Consultancy**. Please read this detailed blog on Corporate Matter of essential relevance and provide your valued comments.

Companies (Investment in Associated Companies or Associated Undertakings) Regulations 2017

These regulations were issued by Securities and Exchange Commission of Pakistan (SECP) on 6th of December 2017 vide SRO # S. R. O. 1240(I)/2017. Before elaborating the procedural requirements of these regulations, we need to understand the terms used, which are as follows:-

“Investment” means shall include equity investment, loans, advances, guarantees, by whatever name called, except trade transaction(s) carried out on arms-length and in accordance with the trade policy of the company.

“Equity Investment” includes investment in the shares of a company.

“Associated companies and associated undertakings” in broader terms means any two or more companies or undertakings, or a company and an undertaking, interconnected with each other that i) they are under common management / Control ii) If the owner / partner / director of one company / undertaking, holds or controls not less than twenty percent shares / voting power, is also the owner / partner / director of another company or undertaking and holds or controls not less than twenty percent shares / voting power. (Complete definition may be observed under clause (4) of sub-section (1) of section 2 of the Companies Act 2017).

Initial Requirements for Investment in Associated Companies or Associated undertakings:

Basic Requirement of the Companies Act 2017, for making investment in **Associated Companies or Associated Undertakings is that** “No investment shall be made unless authorized by a special resolution which shall indicate the nature, period, amount of investment and terms and conditions attached thereto”.

In case of investment though loan / advance, written agreement shall contain the repayment plan, and rate of return which shall not be less than the borrowing cost of the investee. Further directors of the investing company shall certify that the investment is made after due diligence and financial health of the borrowing company is such that it has the ability to repay the loan as per the agreement. Due Diligence shall be made available to members for inspection during the meeting.

Notice of Meeting and Information to Members for Passing of Special Resolution:

In a General Meeting called for considering decision for investment in Associated Companies or Associated Undertakings, the information required to present to the members is defined under chapter II of the regulations. Regulations require disclosure of the information to the members of the investing company in 03 categories, the extracts of which are as follows: -

- General Disclosures:-

- i) basis of relationship;
- ii) earnings per share for the last three years;
- iii) break-up value per share, based on latest audited financial statements;
- iv) financial position, including main items of statement of financial position and profit and loss account on the basis of its latest financial statements; and
- v) in case of investment in relation to a project of associated company or associated undertaking that has not commenced operations, following further information, namely,-
 - a. description of the project and its history since conceptualization;
 - b. starting date and expected date of completion of work;
 - c. time by which such project shall become commercially operational;
 - d. expected time by which the project shall start paying return on investment; and
 - e. funds invested or to be invested by the promoters, sponsors, associated company or associated undertaking distinguishing between cash and non-cash amounts;
- vi) maximum amount of investment to be made
- vii) purpose, benefits likely to accrue to the investing company and its members from such investment and period of investment;
- viii) sources of funds to be utilized for investment and where the investment is intended to be made using borrowed funds, justification for investment through borrowings;
- ix) detail of collateral, guarantees provided and assets pledged for obtaining such funds; and
- x) cost benefit analysis,
- xi) salient features of the agreement(s), if any, with associated company or associated undertaking with regards to the proposed investment,
- xii) direct or indirect interest of directors, sponsors, majority shareholders and their relatives, if any, in the associated company or associated undertaking or the transaction under consideration; and
- xiii) in case any investment in associated company or associated undertaking has already been made, the performance review of such investment including complete information/justification for any impairment or write offs; and any other important details necessary for the members to understand the transaction;

2 - Disclosures in case of Equity Investments

Following disclosures in addition general disclosures shall be made:

- i) maximum price at which securities will be acquired;
- ii) in case the purchase price is higher than market value in case of listed securities and fair value in case of unlisted securities, justification thereof;
- iii) maximum number of securities to be acquired;
- iv) number of securities and percentage thereof held before and after the proposed investment;
- v) current and preceding twelve weeks' weighted average market price where investment is proposed to be made in listed securities; and
- vi) fair value determined by a person having such qualifications and experience and registered as a valuer in such manner and on such terms and conditions as may be specified by the Commission.

3 - Disclosure for investments in the form of loans, advances and guarantees,

Following disclosures in addition general disclosures shall be made:

- i) category-wise amount of investment;
- ii) average borrowing cost of the investing company, the Karachi Inter Bank Offered Rate (KIBOR) for the relevant period, rate of return for Shariah compliant products and
- iii) rate of return for unfunded facilities, as the case may be, for the relevant period;
- iv) rate of interest, mark up, profit, fees or commission etc. to be charged by investing company;
- v) particulars of collateral or security to be obtained in relation to the proposed investment;
- vi) if the investment carries conversion feature i.e. it is convertible into securities, this fact along with terms and conditions including conversion formula, circumstances in which the conversion may take place and the time when the conversion may be exercisable; and
- vii) repayment schedule and terms and conditions of loans or advances to be given to the associated company or associated undertaking.

Listed company shall simultaneously dispatch a copy of aforesaid notice and the statement of material facts to the head office of the Securities and Exchange Commission of Pakistan, through fax or email and courier service on the same day it is dispatched to the members. The directors of the investing company while presenting the special resolution for making investment in an associated company or associated undertaking shall certify to the members of the investing company that they have carried out necessary due diligence for the proposed investment before recommending it for members' approval.

In case any decision to make investment under the authority of a resolution passed is not fully implemented in line with the approval of members till the holding of subsequent general meeting, the status of the decision shall be explained to the members through a statement having the following details namely,-

- (a) total investment approved;
- (b) amount of investment made to date;
- (c) reasons for deviations from the approved timeline of investment, where investment decision was to be implemented in specified time; and
- (d) material change in financial statements of associated company or associated undertaking since date of the resolution passed for approval of investment.

MAINTENANCE OF RECORD

An Investing company shall maintain a register in the specified Form (as prescribed under these regulations) and shall enter therein the particulars of its investments in associated company or associated undertakings.

Nauman UI Qadeer

For more Blogs, please visit

<http://khilji.net.pk/category/blog/>

SOCIAL MEDIA PRESENCE

We at Khilji & Co, Chartered Accountants are fully aware of the fact that in this modern day and age connectivity is the key. Hence, we keep of striving for this through various social media forums. Please visits our pages and do provide your valuable comments.

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